

Eminent Domain

Title 78, Chapter 34

(Text is current through the 2007 General Session)

- 78-34-1. Uses for which right may be exercised.**
 - 78-34-2. Estates and rights that may be taken.**
 - 78-34-3. Private property which may be taken.**
 - 78-34-4. Conditions precedent to taking.**
 - 78-34-4.5. Negotiation and disclosure required before voting to approve an eminent domain action.**
 - 78-34-5. Right of entry for survey and location.**
 - 78-34-6. Complaint -- Contents.**
 - 78-34-7. Who may appear and defend.**
 - 78-34-8. Powers of court or judge.**
 - 78-34-9. Occupancy of premises pending action -- Deposit paid into court -- Procedure for payment of compensation.**
 - 78-34-10. Compensation and damages -- How assessed.**
 - 78-34-11. Damages -- When right deemed to have accrued -- Mitigation or reduction -- Improvements.**
 - 78-34-12. When title sought found defective -- Another action allowed.**
 - 78-34-13. Payment of award -- Bond from railroad to secure fencing.**
 - 78-34-14. Distribution of award -- Execution -- Annulment of proceedings on failure to pay.**
 - 78-34-15. Judgment of condemnation -- Recordation -- Effect.**
 - 78-34-16. Substitution of bond for deposit paid into court -- Abandonment of action by condemner -- Conditions of dismissal.**
 - 78-34-17. Rights of cities and towns not affected.**
 - 78-34-18. When right of way acquired -- Duty of party acquiring.**
 - 78-34-19. Action to set aside condemnation for failure to commence or complete construction within reasonable time.**
 - 78-34-20. Sale of property acquired by eminent domain.**
 - 78-34-21. Dispute resolution.**
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78-34-1. Uses for which right may be exercised.

Subject to the provisions of this chapter, the right of eminent domain may be exercised in behalf of the following public uses:

- (1) All public uses authorized by the Government of the United States.
- (2) Public buildings and grounds for the use of the state, and all other public uses authorized by the Legislature.
- (3) Public buildings and grounds for the use of any county, city or incorporated town, or board of education; reservoirs, canals, aqueducts, flumes, ditches, or pipes for conducting water for the use of the inhabitants of any county or city or incorporated

town, or for the draining of any county, city or incorporated town; the raising of the banks of streams, removing obstructions therefrom, and widening, deepening or straightening their channels; bicycle paths and sidewalks adjacent to paved roads; roads, streets and alleys for public vehicular use, excluding trails, paths, or other ways for walking, hiking, bicycling, equestrian use, or other recreational uses; and all other public uses for the benefit of any county, city or incorporated town, or the inhabitants thereof.

- (4) Wharves, docks, piers, chutes, booms, ferries, bridges, toll roads, byroads, plank and turnpike roads, roads for transportation by traction engines or road locomotives, roads for logging or lumbering purposes, and railroads and street railways for public transportation.
- (5) Reservoirs, dams, watergates, canals, ditches, flumes, tunnels, aqueducts and pipes for the supplying of persons, mines, mills, smelters or other works for the reduction of ores, with water for domestic or other uses, or for irrigation purposes, or for the draining and reclaiming of lands, or for the floating of logs and lumber on streams not navigable, or for solar evaporation ponds and other facilities for the recovery of minerals in solution.
- (6) Roads, railroads, tramways, tunnels, ditches, flumes, pipes and dumping places to facilitate the milling, smelting or other reduction of ores, or the working of mines, quarries, coal mines or mineral deposits including minerals in solution; outlets, natural or otherwise, for the deposit or conduct of tailings, refuse or water from mills, smelters or other works for the reduction of ores, or from mines, quarries, coal mines or mineral deposits including minerals in solution; mill dams; gas, oil or coal pipelines, tanks or reservoirs, including any subsurface stratum or formation in any land for the underground storage of natural gas, and in connection therewith such other interests in property as may be required adequately to examine, prepare, maintain, and operate such underground natural gas storage facilities; and solar evaporation ponds and other facilities for the recovery of minerals in solution; also any occupancy in common by the owners or possessors of different mines, quarries, coal mines, mineral deposits, mills, smelters, or other places for the reduction of ores, or any place for the flow, deposit or conduct of tailings or refuse matter.
- (7) Byroads leading from highways to residences and farms.
- (8) Telegraph, telephone, electric light and electric power lines, and sites for electric light and power plants.
- (9) Sewerage of any city or town, or of any settlement of not less than ten families, or of any public building belonging to the state, or of any college or university.

- (10) Canals, reservoirs, dams, ditches, flumes, aqueducts and pipes for supplying and storing water for the operation of machinery for the purpose of generating and transmitting electricity for power, light or heat.
- (11) Cemeteries and public parks.
- (12) Pipe lines for the purpose of conducting any and all liquids connected with the manufacture of beet sugar.
- (13) Sites for mills, smelters or other works for the reduction of ores and necessary to the successful operation thereof, including the right to take lands for the discharge and natural distribution of smoke, fumes and dust therefrom, produced by the operation of such works; provided, that the powers granted by this subdivision shall not be exercised in any county where the population exceeds twenty thousand, or within one mile of the limits of any city or incorporated town; nor unless the proposed condemner has the right to operate by purchase, option to purchase or easement, at least seventy-five per cent in value of land acreage owned by persons or corporations situated within a radius of four miles from the mill, smelter or other works for the reduction of ores; nor beyond the limits of said four-mile radius; nor as to lands covered by contracts, easements or agreements existing between the condemner and the owner of land within said limit and providing for the operation of such mill, smelter or other works for the reduction of ores; nor until an action shall have been commenced to restrain the operation of such mill, smelter or other works for the reduction of ores.

78-34-2. Estates and rights that may be taken.

The following estates and rights in lands are subject to being taken for public use:

- (1) a fee simple, when taken for:
 - (a) public buildings or grounds;
 - (b) permanent buildings;
 - (c) reservoirs and dams, and permanent flooding occasioned by them;
 - (d) any permanent flood control structure affixed to the land;
 - (e) an outlet for a flow, a place for the deposit of debris or tailings of a mine, mill, smelter, or other place for the reduction of ores; and
 - (f) solar evaporation ponds and other facilities for the recovery of minerals in solution, except when the surface ground is underlaid with minerals, coal, or other deposits sufficiently valuable to justify extraction, only a perpetual easement may be taken over the surface ground over the deposits;
- (2) an easement, when taken for any other use; and
- (3) the right of entry upon and occupation of lands, with the right to take from those lands earth, gravel, stones, trees, and timber as necessary for a public use.

78-34-3. Private property which may be taken.

The private property which may be taken under this chapter includes:

- (1) all real property belonging to any person.
- (2) lands belonging to the state, or to any county, city or incorporated town, not appropriated to some public use.
- (3) property appropriated to public use; provided, that such property shall not be taken unless for a more necessary public use than that to which it has been already appropriated.
- (4) franchises for toll roads, toll bridges, ferries, and all other franchises; provided, that such franchises shall not be taken unless for free highways, railroads, or other more necessary public use.
- (5) all rights of way for any and all purposes mentioned in Section 78-34-1 hereof, and any and all structures and improvements thereon, and the lands held or used in connection therewith, shall be subject to be connected with, crossed or intersected by any other right of way or improvement or structure thereon; they shall also be subject to a limited use in common with the owners thereof, when necessary; but such uses of crossings, intersections and connections shall be made in the manner most compatible with the greatest public benefit and the least private injury.
- (6) all classes of private property not enumerated may be taken for public use when such taking is authorized by law.

78-34-4. Conditions precedent to taking.

- (1) Before property can be taken it must appear:
 - (a) that the use to which it is to be applied is a use authorized by law;
 - (b) that the taking is necessary to such use;
 - (c) that construction and use of all property sought to be condemned will commence within a reasonable time as determined by the court, after the initiation of proceedings under this chapter; and
 - (d) if already appropriated to some public use, that the public use to which it is to be applied is a more necessary public use.
- (2) (a) As used in this Subsection (2), "governing body" means:
 - (i) for a county, city, or town, the legislative body of the county, city, or town; and
 - (ii) for any other political subdivision of the state, the person or body with authority to govern the affairs of the political subdivision.
- (b) Property may not be taken by a political subdivision of the state unless the governing body of the political subdivision approves the taking.

- (c) Before taking a final vote to approve the filing of an eminent domain action, the governing body of each political subdivision intending to take property shall provide written notice to each owner of property to be taken of each public meeting of the political subdivision's governing body at which a vote on the proposed taking is expected to occur and allow the property owner the opportunity to be heard on the proposed taking.
- (d) The requirement under Subsection (2)(c) to provide notice to a property owner is satisfied by the governing body mailing the written notice to the property owner:
 - (i) at the owner's address as shown on the records of the county assessor's office; and
 - (ii) at least ten business days before the public meeting.

78-34-4.5. Negotiation and disclosure required before voting to approve an eminent domain action.

Each person who seeks to acquire property by eminent domain or who intends to use eminent domain to acquire property if the property cannot be acquired in a voluntary transaction shall:

- (1) before taking a final vote to approve the filing of an eminent domain action, make a reasonable effort to negotiate with the property owner for the purchase of the property; and
- (2) as early in the negotiation process under Subsection (1) as practicable but no later than 14 days before a final vote is taken to approve the filing of an eminent domain action, unless the court for good cause allows a shorter period before filing:
 - (a) advise the property owner of the owner's rights to mediation and arbitration under Section 78-34-21, including the name and current telephone number of the property rights ombudsman, established in Title 13, Chapter 43, Property Rights Ombudsman Act; and
 - (b) provide the property owner a written statement explaining that oral representations or promises made during the negotiation process are not binding upon the person seeking to acquire the property by eminent domain.

78-34-5. Right of entry for survey and location.

- (1) If land is required for public use, the person or the person's agent in charge of the use may survey and locate the same; but it must be located in the manner which will be most compatible with the greatest public good and the least private injury, and subject to the provisions of this chapter.

- (2) (a) The person or the person's agent in charge of the public use may, at reasonable times and upon reasonable notice, enter upon the land and make examinations, surveys, and maps of the land.
- (b) Entry upon land as authorized under Subsection (2)(a) does not constitute a cause of action in favor of the owners of the lands, except for actual damage to the land and improvements on the land caused by such entry, which is not repaired on or before the date the examinations and surveys are completed.

78-34-6. Complaint -- Contents.

The complaint must contain:

- (1) the name of the corporation, association, commission or person in charge of the public use for which the property is sought, who must be styled plaintiff;
- (2) the names of all owners and claimants of the property, if known, or a statement that they are unknown, who must be styled defendants;
- (3) a statement of the right of the plaintiff;
- (4) if a right of way is sought, the complaint must show its location, general route and termini, and must be accompanied by a map thereof, so far as the same is involved in the action or proceeding;
- (5) if any interest in land is sought for a right of way or associated facilities for a subject activity as defined in Section 19-3-318:
 - (a) the permission of the governor with the concurrence of the Legislature authorizing:
 - (i) use of the site for a subject activity; and
 - (ii) use of the proposed route for a subject activity; and
 - (b) the proposed route as required by Subsection (4); and
- (6) a description of each piece of land sought to be taken, and whether the same includes the whole or only part of an entire parcel or tract. All parcels lying in the county and required for the same public use may be included in the same or separate proceedings, at the option of the plaintiff, but the court may consolidate or separate them to suit the convenience of parties.

78-34-7. Who may appear and defend.

All persons in occupation of, or having or claiming an interest in, any of the property described in the complaint, or in the damages for the taking thereof, though not named, including shareholders in a mutual stock water company in a proceeding involving the taking of the company or property belonging to the company, may appear, plead and defend, each in respect to his own property or interest, or that claimed by him, in the same manner as if named in the complaint.

78-34-8. Powers of court or judge.

The court or judge thereof shall have power:

- (1) to hear and determine all adverse or conflicting claims to the property sought to be condemned, and to the damages therefor, and
- (2) to determine the respective rights of different parties seeking condemnation of the same property.

78-34-9. Occupancy of premises pending action -- Deposit paid into court -- Procedure for payment of compensation.

- (1) (a) At any time after the commencement of suit, and after giving notice to the defendant as provided in the Utah Rules of Civil Procedure, the plaintiff may file a motion with the court requesting an order permitting the plaintiff to:
 - (i) occupy the premises sought to be condemned pending the action, including appeal; and
 - (ii) to do whatever work on the premises that is required.
- (b) Except as ordered by the court for good cause shown, a defendant may not be required to reply to a motion for immediate occupancy before expiration of the time to answer the complaint.
- (2) The court shall:
 - (a) take proof by affidavit or otherwise of:
 - (i) the value of the premises sought to be condemned;
 - (ii) the damages that will accrue from the condemnation; and
 - (iii) the reasons for requiring a speedy occupation; and
 - (b) grant or refuse the motion according to the equity of the case and the relative damages that may accrue to the parties.
- (3) (a) If the motion is granted, the court shall enter its order requiring that the plaintiff, as a condition precedent to occupancy, file with the clerk of the court a sum equal to the condemning authority's appraised valuation of the property sought to be condemned.
- (b) That amount shall be for the purposes of the motion only and is not admissible in evidence on final hearing.
- (4) (a) Upon the filing of the petition for immediate occupancy, the court shall fix the time within which, and the terms upon which, the parties in possession are required to surrender possession to the plaintiff.
- (b) The court may issue orders governing encumbrances, liens, rents, assessments, insurance, and other charges, if any, as required.

- (5) (a) The rights of just compensation for the land taken as authorized by this section or damaged as a result of that taking vests in the parties entitled to it.
- (b) That compensation shall be ascertained and awarded as provided in Section 78-34-10.
- (c) (i) Except as provided in Subsection (5)(c)(ii), judgment shall include, as part of the just compensation awarded, interest at the rate of 8% per annum on the amount finally awarded as the value of the property and damages, from the date of taking actual possession of the property by the plaintiff or from the date of the order of occupancy, whichever is earlier, to the date of judgment.
- (ii) The court may not award interest on the amount of the judgment that was paid into court.
- (6) (a) Upon the application of the parties in interest, the court shall order that the money deposited in the court be paid before judgment as an advance on the just compensation to be awarded in the proceeding.
- (b) This advance payment to a defendant shall be considered to be an abandonment by the defendant of all defenses except a claim for greater compensation.
- (c) If the compensation finally awarded exceeds the advance, the court shall enter judgment against the plaintiff for the amount of the deficiency.
- (d) If the advance received by the defendant is greater than the amount finally awarded, the court shall enter judgment against the defendant for the amount of the excess.
- (7) Arbitration of a dispute under Section 13-43-204 or 78-34-21 is not a bar or cause to stay the action for occupancy of premises authorized by this section.

78-34-10. Compensation and damages -- How assessed.

The court, jury or referee must hear such legal evidence as may be offered by any of the parties to the proceedings, and thereupon must ascertain and assess:

- (1) the value of the property sought to be condemned and all improvements thereon appertaining to the realty, and of each and every separate estate or interest therein; and if it consists of different parcels, the value of each parcel and of each estate or interest therein shall be separately assessed;
- (2) if the property sought to be condemned constitutes only a part of a larger parcel, the damages which will accrue to the portion not sought to be condemned by reason of its severance from the portion sought to be condemned and the construction of the improvement in the manner proposed by the plaintiff;
- (3) if the property, though no part thereof is taken, will be damaged by the construction of the proposed improvement, the amount of such damages;

- (4) separately, how much the portion not sought to be condemned, and each estate or interest therein, will be benefited, if at all, by the construction of the improvement proposed by the plaintiff. If the benefit shall be equal to the damages assessed under Subdivision (2) of this section, the owner of the parcel shall be allowed no compensation except the value of the portion taken; but if the benefit shall be less than the damages so assessed, the former shall be deducted from the latter, and the remainder shall be the only damages allowed in addition to the value of the portion taken;
- (5) if the property sought to be condemned consists of water rights or part of a water delivery system or both, and the taking will cause present or future damage to or impairment of the water delivery system not being taken, including impairment of the system's carrying capacity, an amount to compensate for the damage or impairment;
- (6) if land on which crops are growing at the time of service of summons is sought to be condemned, the value that those crops would have had after being harvested, taking into account the expenses that would have been incurred cultivating and harvesting the crops; and
- (7) as far as practicable compensation must be assessed for each source of damages separately.

78-34-11. Damages -- When right deemed to have accrued -- Mitigation or reduction -- Improvements.

- (1) For the purpose of assessing compensation and damages, the right thereto shall be deemed to have accrued at the date of the service of summons, and its actual value at that date shall be the measure of compensation for all property to be actually taken, and the basis of damages to property not actually taken, but injuriously affected, in all cases where such damages are allowed, as provided in Section 78-34-10.
- (2) The court or the jury shall consider mitigation or reduction of damages in its assessment of compensation and damages if, after the date of the service of summons, the plaintiff:
 - (a) mitigates the damages to the property; or
 - (b) reduces the amount of property actually taken.
- (3) Improvements put upon the property by the property owner subsequent to the date of service of summons shall not be included in the assessment of compensation or damages.

78-34-12. When title sought found defective -- Another action allowed.

If the title attempted to be acquired is found to be defective from any cause, the plaintiff may again institute proceedings to acquire the same as in this chapter prescribed.

78-34-13. Payment of award -- Bond from railroad to secure fencing.

The plaintiff must, within thirty days after final judgment, pay the sum of money assessed; and, if the plaintiff is a railroad company, it shall also execute to the defendant a bond, with sureties, to be determined and approved by the court or judge, conditioned that the plaintiff will build proper fences within six months from the time the railroad is built on or over the land taken. In an action on the bond all damages sustained and the cost of the construction of such fences may be recovered.

78-34-14. Distribution of award -- Execution -- Annulment of proceedings on failure to pay.

Payment may be made to the defendants entitled thereto, or the money may be deposited in court for the defendants and distributed to those entitled thereto. If the money is not so paid or deposited, the defendants may have execution as in civil cases; and if the money cannot be made on execution, the court upon a showing to that effect must set aside and annul the entire proceedings, and restore possession of the property to the defendants, if possession has been taken by the plaintiff.

78-34-15. Judgment of condemnation -- Recordation -- Effect.

When payments have been made and the bond given, if the plaintiff elects to give one, as required by Sections 78-34-13 and 78-34-14, the court must make a final judgment of condemnation, which must describe the property condemned and the purpose of such condemnation. A copy of the judgment must be filed in the office of the recorder of the county, and thereupon the property described therein shall vest in the plaintiff for the purpose therein specified.

78-34-16. Substitution of bond for deposit paid into court -- Abandonment of action by condemner -- Conditions of dismissal.

In the event that no order is entered by the court permitting payment of said deposit on account of the just compensation to be awarded in the proceeding within thirty (30) days following its deposit, the court may, on application of the condemning authority, permit the substitution of a bond in such amount and with such sureties as shall be determined and approved by the court. Condemner, whether a public or private body, may, at any time prior to final payment of compensation and damages awarded the defendant by the court or jury,

abandon the proceedings and cause the action to be dismissed without prejudice, provided, however, that as a condition of dismissal condemner first compensate condemnee for all damages he has sustained and also reimburse him in full for all reasonable and necessary expenses actually incurred by condemnee because of the filing of the action by condemner, including attorneys fees.

78-34-17. Rights of cities and towns not affected.

Nothing in this chapter must be construed to abrogate or repeal any statute providing for the taking of property in any city or town for street purposes.

78-34-18. When right of way acquired -- Duty of party acquiring.

A party obtaining a right of way shall without delay construct such crossings as may be required by the court or judge, and shall keep them and the way itself in good repair.

78-34-19. Action to set aside condemnation for failure to commence or complete construction within reasonable time.

- (1) In an action to condemn property, if the court makes a finding of what is a reasonable time for commencement of construction and use of all the property sought to be condemned and the construction and use is not accomplished within the time specified, the condemnee may file an action against the condemnor to set aside the condemnation of the entire parcel or any portion thereof upon which construction and use was to have taken place.
- (2) In such action, if the court finds that the condemnor, without reasonable justification, did not commence or complete construction and use within the time specified, it shall enter judgment fixing the amount the condemnor has paid the condemnee, as a result of condemnation and all amounts due the condemnee as damages sustained by reason of condemnation, including damages resulting from partial completion of the contemplated use, plus all reasonable and necessary expenses actually incurred by the condemnee including attorney fees.
- (3) If amounts due the condemnee under Subsection (2) of this section exceed amounts paid by the condemnor, or these amounts are equal, judgment shall be entered in favor of the condemnee, which judgment shall describe the property condemned and award judgment for any amounts due condemnee. A copy of the judgment shall be filed in the office of the county recorder of the county, and thereupon the property described therein shall vest in the condemnee.
- (4) If amounts paid by the condemnor under Subsection (2) of this section exceed amounts due the condemnee, judgment shall be entered describing the property condemned and

giving the condemnee 60 days from the date thereof to pay the difference between the amounts to the condemnor. If payment is made, the court shall amend the judgment to reflect such payment and order the amended judgment filed with the office of the county recorder of the county, and thereupon the property described therein shall vest in the condemnee. If payment is not made, the court shall amend the judgment to reflect nonpayment and order the amended judgment filed with the county recorder of the county.

78-34-20. Sale of property acquired by eminent domain.

- (1) As used in this section, "condemnation or threat of condemnation" means:
 - (a) acquisition through an eminent domain proceeding; or
 - (b) an official body of the state or a subdivision of the state, having the power of eminent domain, has specifically authorized the use of eminent domain to acquire the real property.
- (2) If the state or one of its subdivisions, at its sole discretion, declares real property that is acquired through condemnation or threat of condemnation to be surplus real property, it may not sell the real property on the open market unless:
 - (a) the real property has been offered for sale to the original grantor, at the highest offer made to the state or one of its subdivisions with first right of refusal being given to the original grantor;
 - (b) the original grantor expressly waived in writing the first right of refusal on the offer or failed to accept the offer within 90 days after notification by registered mail to the last-known address; and
 - (c) neither the state nor the subdivision of the state selling the property is involved in the rezoning of the property or the acquisition of additional property to enhance the value of the real property to be sold.
- (3) This section shall only apply to property acquired after July 1, 1983.

78-34-21. Dispute resolution.

- (1) In any dispute between a condemner and a private property owner arising out of this chapter, the private property owner may submit the dispute for mediation or arbitration to the private property ombudsman under Section 13-43-204.
- (2) An action submitted to the private property ombudsman under authority of this section does not bar or stay any action for occupancy of premises authorized by Section 78-34-9.
- (3) (a) (i) A mediator or arbitrator, acting at the request of the property owner under Section 13-43-204, has standing in an action brought in district court under

this chapter to file with the court a motion to stay the action during the pendency of the mediation or arbitration.

- (ii) A mediator or arbitrator may not file a motion to stay under Subsection (3)(a)(i) unless the mediator or arbitrator certifies at the time of filing the motion that a stay is reasonably necessary to reach a resolution of the case through mediation or arbitration.
- (b) If a stay is granted pursuant to a motion under Subsection (3)(a) and the order granting the stay does not specify when the stay terminates, the mediator or arbitrator shall file with the district court a motion to terminate the stay within 30 days after:
 - (i) the resolution of the dispute through mediation;
 - (ii) the issuance of a final arbitration award; or
 - (iii) a determination by the mediator or arbitrator that mediation or arbitration is not appropriate.
- (4)
 - (a) The private property owner or displaced person may request that the mediator or arbitrator authorize an additional appraisal.
 - (b) If the mediator or arbitrator determines that an additional appraisal is reasonably necessary to reach a resolution of the case, the mediator or arbitrator may:
 - (i) have an additional appraisal of the property prepared by an independent appraiser; and
 - (ii) require the condemnor to pay the costs of the first additional appraisal.